

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation on the
Commission's own motion into the Pacific Telesis
Group's "spin-off" proposal.

Investigation 93-02-028
(Filed February 17, 1993)

**ADMINISTRATIVE LAW JUDGE'S RULING
SOLICITING COMMENTS ON CONCLUDING PROCEEDING**

Background

In December 1992, the Pacific Telesis Group (Telesis)¹ Board of Directors voted to divest its wireless companies and to spin-off these subsidiaries into a separate company (referred to as PacTel Corporation or PacTel²). PacTel was to include the wireless operations of PacTel Cellular, Pacific Telesis International, PacTel Paging, PacTel Services, Locations Technologies, and 51% of PacTel Teletrac. The remaining corporate entity was to consist primarily of the holding company (Telesis) and the wireline regional Bell Operating Companies, Pacific Bell Telephone Company (currently doing business as SBC California³) and Nevada Bell Telephone Company (dba SBC Nevada).

¹ Telesis, one of the original seven regional holding companies, was the parent of two Bell Operating Companies and certain diversified subsidiaries listed herein.

² Initially named PacTel, but subsequently renamed AirTouch.

³ In March 1997, pursuant to Decision (D.) 97-03-067, Telesis merged with SBC Communications, Inc. (SBC).

In February 1993, the Commission initiated this proceeding by issuing an order instituting investigation into the Telesis spin-off proposal.⁴ Posing a series of questions, the order required Telesis to “provide a comprehensive description of the spin-off and a showing as to its effects.” (51 CPUC 2d 728, 734 (1993).)

Ultimately, after examining the Telesis proposal in light of Pub. Util. Code § 851 and two other key statutes,⁵ the interim decision determined that “no assets used and useful in the conduct of a utility business” were to be transferred away from any of the operating utilities.⁶ The Commission also required Telesis and AirTouch to transfer or allocate “any assets necessary or useful to the California operating utility . . . or the California wireless utilities” to the appropriate entity.

Since the terms of the proposed transaction were not finalized during the pendency of the investigation and there was the possibility that utility property might be transferred after it was consummated, the Commission ordered a compliance report of the separation transaction by an independent auditor. The Commission directed the immediate commencement of the compliance report, and the auditor was to complete it as soon after the date of final separation as reasonably possible.

⁴ In January 1993, the Telesis Board, asserting that the proposal did not require Commission authorization, provided the Commission with a written description of the plan to spin-off its wireless subsidiaries.

⁵ Pub. Util. Code §§ 818 and 854.

⁶ Including Pacific and the California wireless utilities.

Pursuant to D.93-11-011,⁷ Telesis selected the independent auditing firm of Frederick & Warinner (F&W) with the Commission's approval. The consulting contract was between F&W and the Commission, with Telesis obligated to reimburse the Commission "for all consultant expenses incurred to accomplish the report." (*Id.*) The Telecommunications Division administered the contract. F&W submitted its report⁸ on November 7, 1994. No further action took place following submission of the report.

Discussion

The overall assessment of the report is that the Separation Agreement, D.93-11-011, and the Commission's affiliate transaction rules had been complied with during the separation transaction in all material respects. However, the report indicates that a discrepancy has been detected in the transaction in the area of payment responsibility for employee benefits plans. While the report quantifies the impact of the discrepancy on Telesis and AirTouch, it notes that quantifying the smaller direct impact on SBC California ratepayers is contingent upon several future variables, and consequently declines to do so.

Further investigation of the reported employee benefits plans' discrepancy as well as the capacity to quantify and assess substantiated payment responsibility appear to be complicated by the fact that both the transferor (Telesis) and transferee (AirTouch) have since merged with other companies, one

⁷ The decision provided that the auditing firm should be selected so as to avoid conflicts of interest relating to the firm's other business, if any, with Telesis, Pacific, or PacTel. (51 CPUC 2d at 770.)

⁸ Confidential and redacted versions of "Results of the Audit of the Separation of the Pacific Telesis Group of Companies Prepared for the California Public Utilities Commission."

of which we normally regulate, while the other operates largely outside of our regulatory purview.

The Commission would like to resolve and close this docket in the near term. To that end, this ruling requests interested parties to comment on:

(1) whether or not, given the passage of time and jurisdictional issue, this proceeding has become academic or moot; (2) if not, how the Commission should conclude this proceeding; and (3) whether, and to what extent, the commenter wishes to participate in any concluding phase of this case. Parties are asked to submit their comments on this matter by June 17, 2004.

Accordingly, **IT IS RULED** that:

1. To assist the Commission in resolving and closing Investigation 93-02-028 in the near term, interested parties are asked to comment on the following:

(1) Whether or not, given the passage of time and jurisdictional issue, this proceeding has become academic or moot; (2) If not, how the Commission should conclude this proceeding; and (3) Whether, and to what extent, the commenter wishes to participate in any concluding phase of this case.

2. Parties are asked to submit their comments on or before June 17, 2004.

Dated June 3, 2004, at San Francisco, California.

/s/ JACQUELINE A. REED

Jacqueline A. Reed
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail, and by electronic mail to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Administrative Law Judge's Ruling Soliciting Comments on Concluding Proceeding on all parties of record in this proceeding or their attorneys of record.

Dated June 3, 2004, at San Francisco, California.

/s/ KE HUANG

Ke Huang

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.